1951.

Examined

# File No. S. Dwr 10/51

Legal DEPARTMENT
E BRANCH

**Subject:—** Suit Dhanwar

In the Court of Civil Judge (J.D.) Dhanwar
Civil Suit no. 12 of 1957

Ramniklal Jain - - Plff
vs
The State of Bombay - - - Defe

Re:- For perpetual injunction restraining the Government from interfering with the plaintiff's possession of the Government building.

File No. S. Dwr 10/57

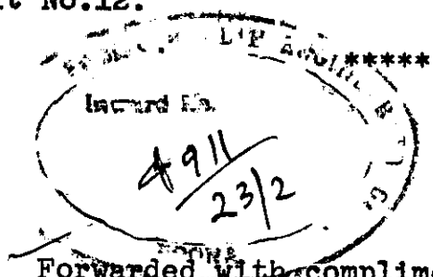
Bbl. Secty.-Ship 24-B

C O N T E N T S.

Legal Department File No: S. Dwr. 10/51.

| Sr.No: | R.I./O.No: | Subject | Pages. |
|---|---|---|---|
| | | Suits Dharwar. | |
| | | In the court of the Civil Judge (J.D.) Dharwar. | |
| | | C.S.No. 12 of 1951. | |
| | | Ramniklal Jain v/s The State of B'bay. | |
| | | For perpetual injunction restraining the defdt. from interfering with the pltff's possession of the Govt. Building. | 1-22. |

Below letter No.147 dated 8th February 1951 from the District Government Pleader, Dharwar, addressed to the Remembrancer of Legal Affairs, Bombay, regarding:- Long Cause Suit No.12.




No.G.14/A/ 1186 of 1951.

Karnatak Public Health Works Dn.,
Dharwar, 20th February 1951.

Forwarded with compliments to the Public Health Engineer to Govt., Poona, for further disposal as required by para 119 of Chapter XI of the Law Officers (condition of service) Rules & Rules for the conduct of the Legal Affairs of Govt. issued by the Legal Department.

2. The information required by the para referred to above is detailed below.

(i) The number of the unit is 12.

(ii) The Long Cause Suit is instituted in the Court of the Civil Judge, Junior Division, Dharwar, on the 18th --- January 1951.

(iii) The names of parties to the suit:-
Shri Ramniklal Jain
Versus
The Deputy Engineer, Neersagar Head Works Sub-Division.

(iv) The plaintiff claims -

(a) The defendant be retrained by injunction to eject the Plaintiff from the Govt. store rooms.

(b) The cost of the suit.

(c) Any other ~~x~~ equitable relief which the Court is pleased to grant.

(v) Notice of 2 months of the action was not given by the Court under Section 80 of the Civil Procedure Code and ~~a~~ temporary injunction to refrain from ejecting the plaintiff from the Govt. store rooms forcibly occupied by him was issued by the Court, without such a notice.

The Assistance of the District Govt.Pleader, Dharwar, had therefore to be sought immediately as required by para --- 118(3) of the Law Officers (Condition of Service) Rules, before approaching the Public Health Engineer to Govt., Poona, in the matter, so that immediate action to vacate the temporary injunction could be taken to avoid pilfering of the Govt. articles stored in the rooms. The temporary injunction has however been vacated on 1-2-1951 as stated by the District Govt. Pleader in his above letter.

3. The following papers are enclosed -

(p.p.8) (a) A copy of the plaint for temporary injunction.
(p.p.13) (a) A copy of the temporary injunction dated 19-1-1951.
(b) A copy of the objections to the temporary
(p.p.1) injunction drawn by the District Govt.Pleader, Dharwar.
(p.p.10) (c) A copy of the plaint dated 18-1-1951.
(d) A file and detailed statement of the case showing circumstances which led to the suit, contained in
(p.p.4) Deputy Engineer,N.H.W.Sub-Dn.'s letter No.214 dated 22-1-1951 forwarded to the Dist.Govt.Pleader, under Ex.Engr.,K.P.H.W.Dn.'s No.G.14/A/440 dated 23-1-51.

P.T.O.

4. The suit may be defended on the grounds detailed in the statement of the case referred to above. The only documentary evidence to prove that the plaintiff was on daily wages and that his services are to be dispensed with without notice is the Nominal Muster Roll of Daily wage workers of the Department.

Executive Engineer,
MRB/19.2.51. Karnatak Public Health Works Division.

Copy of the endorsement, forwarded with compliments to the District Government Pleader, Dharwar, for information.

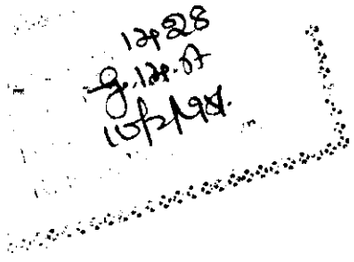
*********

No. 147 dated 8 Feb '51,
Office of the District Government
Pleader, Dharwar.

To

The Remembrancer of Legal Affairs,

Bombay.



Sub :- L.C.Suit No.12 of 1951 on the file of the Civil Judge, Junior Division, Dharwar, District Dharwar.

Plff :- Ramniklal Jain.
Versus.
Deft :- Shri.V.D.Kulkarni, Deputy Engineer, Neersagar Works.

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Sir,

I have the honour to inform you that the top noted suit was filed without serving notice under section 80 of the Civil Procedure Code and the plaintiff obtained an order of temprary injunction restraining the defendant from ejecting the plaintiff from the suit property. As the matter seemed to me to be very urgent and if delay ~~in~~ would caused to get the iterim order set aside, there was every likelyhood of Government property being damaged or frittered away, I, in anticipation of your sanction, submitted objections to the said interim order in the Court by putting my vakalat and appearance on behalf of the defendant on 25-1-1951. On that day an undertaking was taken from the plaintiff not to obstruct the defendant in his use and vahivat of the Store Rooms nor to damage any property until the order on his application for temporary injunction was passed by the court. The Court has set aside the order of temporary injunction on 1-2-1951. The summons is not yet served on the defendant. However, the written statement will be submitted on the lines of the written objections mutatis mutandis.

It is therefore requested to sanction the defence of the suit as early as possible. I shall certainly request the Court to frame preliminary issues on the question of Notice under section 80 and of the jurisdiction of the Court. As the defendant is a Public Officer and is sued for acts purporting to have been done in official capacity, the suit shall have to be thrown out on the hearing of the preliminary issues.

The chronological statement of facts are given in defendant's letter No.214 dated 22-1-1951 addressed to the District Government Pleader and the defence is disclosed in the written objection of the defendant submitted to the Court on 25-1-1951.

Papers pages 1 to 13 are enclosed.

Yours faithfully,

Encls :- pages 1 to 13.

R.V.Jathar

for Dist. Govt. Pleader.

Through the Executive Engineer, Karnatak Public Health Works Division, Dharwar, with reference to his No. G-14/A/440 of 1951 dated 23rd January 1951.

Long Cause Civil Suit No.12 of 1950.

In the Court of the Civil Judge, Junior Division, Dhar. at Dharwar.

Plaintiff :- Manikla1 Jain.

Versus.

Defendant :- V.T.Kulkarni, Deputy Engineer.

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In this the defendant begs to submit his objections to the grant of temporary injunction as follows :-

1. The plaintiff's application under Order 39 rule 1 C.P.Code, is false, frivolous and vexatious.

2. The suit is barred under section 80 of the C.P.Code as no notice was given to the defendant. The acts complained of in the suit are acts alleged to be of the defendants he is admittedly a Public Per Officer and which are alleged to have been done by the defendant in his official capacity.

3. The plaintiff has deliberately concealed the fact from the Court that he was a labourer working to give tirake per employed on daily wages on Nominal Muster Roll of the P.W.D. and that he is not a member of regular establishment. As such he is not a regular employee and subordinate of the Department either on permanent, temporary, work charged establishment. Being a casual labourer employed as and when required by exigencies of work, his services are to be dis-

dispensed with without Notice and anything in writing. For such workers on Nominal Muster Roll payment is made to them only for days on which they actually work and present themselves for the Roll Muster Call.

4. The plaintiff did not present himself for the Roll Call from 13th January 1951 afternoon and absented from work from that date onwards and hence he is being marked absent in the Roll from that date. On 16-1-1951 he called at the defendant's office for payment of wages for what ever days he worked and payment has already been made to him on that day.

5. No quarters have been provided by Government for Labourers on daily wages employed on Nominal Muster Rolls and as such there was no question of allotting any quarters to the plaintiff. No quarter was as a matter of fact ever allotted to the plaintiff by the defendant nor was any quarter occupied by him be alleged in the suit.

6. The plaintiff has unauthorizedly, illegally and without any permission from the defendant locked the Government Store Rooms on 16-1-1951 and has occupied them on 20-1-1951 on the strength of the temporary injunction order issued by this Court.

7. No hardship has been caused to the plaintiff as alleged by ~~the plaintiff~~ him in his application The facts alleged by the plaintiff in his application are false and vexatious to his knowledge. Compensatory costs may therefore be awarded on the plaintiff under section 35-A of the C.P.Code.

8. The Store Rooms occupied by the plaintiff on 20-1-1951 contain articles worth of about Rs. 10,000/- and the plaintiff is liable to make good the loss and damage done to the articles during his occupation, of the ex Store Rooms.

7 79 3

9. The Store Rooms are now in occupation of the plaintiff on the strength of the order of this Court and the articles contained in the room belonging to Government are likely to be damaged and ~~fki~~ frittered away by the plaintiff.

10. The plaintiff has no property and if does away any Government property stored in the said Rooms serious loss is likely to cause to Government which cannot be compensated any time later. Besides Govt. work would be hampered if the articles in these rooms are withheld.

11. This Court has no jurisdiction to try this Suit and any order passed by this Court will be illegal and hence null and void. ~~XXXXXX~~

In view of thse facts the defendant prays that the temporary injunction order be vacated and set aside immediately and the defendant be awrded his costs of this application.

Dharwar.
25th Jan '51. Deputy Engineer.

I, V.D.Kulkarni, Deputy Engineer, do hereby solemnly declare that what is contained in this is true to my information and belief as a witness whereof I have signed this on 25-1-1951 at Dharwar.

Deputy Engineer.

9 -13

Dharwar Civil Suit No.12 of 1951.

1. This is a suit for perpetual injunction restraining the defendant from interfering with the plaintiff's possession of the Government building.

2. The suit is defensible.

3. The defence of the suit may be sanctioned on the lines of the accompanying brief.

ADC
23/8

A. Sol. (M) - The brief is prepared by Shri Chopra, I appears the in order.

24-8.

Sol. (Asst.) 24/8/51.

Sec. P.W.D. 30/8/51

x No. 13924 dt. 30/8/51

No. 14360 - 1175

Office of the
Remembrancer of Legal Affairs,
Bombay Castle (Bombay No.1), 7th September 1951.

Subject:- Dharwar Civil Suit No. 12 of 1951
Ramniklal Jain
versus
The State of Bombay.

MEMORANDUM.

The District Government Pleader, Dharwar is informed that the defence of the suit noted above is sanctioned and he is requested to conduct the same on the lines of the brief, a typed copy of which together with two copies of the ~~Written Statement~~ is sent herewith in advance.

Papers of the case in one file received from the Deputy Engineer Neersagar Head Works Dharwar Collector accompany.

O.C. For Remembrancer of Legal Affairs.

To

The District Government Pleader, Dharwar.

C..5.7.51. Submitted for Signature
NDC 6-9

Issued 7/9. g.s. NB 6/9 A. Solr (M.)

G.R.L.D No 15207 dated the 22nd Sept 1931 sent to Pres on 24/9/37

K
24/9

13 17

IMMEDIATE.

No.14190
Office of the
Remembrancer of Legal Affairs,
Bombay Castle(Bombay No.1),4th Sept.1951.

Subject:-Civil Suit Nos.136 and 168 of 1950 and L.C.S.No.68 of 1951 on the file of the Civil Judge,S.D.,Dharwar,and C.S.Nos.12 and 57 of 1951 of the Civil Judge, J.D. Dharwar.

....

MEMORANDUM.

With reference to his letter No.797, dated the 28th August 1951, on the above subject, the District Government Pleader,Dharwar, is requested to prepare the written statements from the copy of the plaint and other documents filed by the plaintiffs and file the same on due dates in Dharwar Civil Suits Nos.136 and 168 of 1950 and No.68 of 1951 and forward a copy of each of them to this office. As regards Dharwar Civil Suit Nos.12 and 57 of 1951, the District Government Pleader,Dharwar is requested to take up preliminary points about jurisdiction.

Sd./S.M. Khatri.
For Remembrancer of Legal Affairs.

To

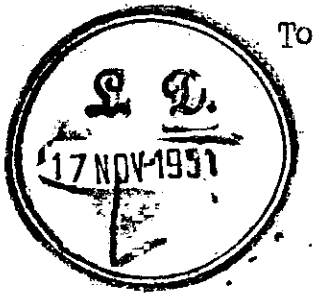
The District Government Pleader,
Dharwar.

SLT/26.9.

Note:-Original O.C. of this letter is kept along with the bps. of Dharwar C.S.No. 136 of 1950.

1045 15-17

No. ~~1050~~ dated 13 Nov '51,
Office of the Dist Govt Pleader,
Dharwar.




To

The Remembrancer of Legal Affairs,

Bombay.

Sub :- L.C. Suit No.12 of 1951 - Dharwar.

R.L.A's Memo No.14340 dated 7th Sept '51.

Sir,

I have the honour to inform you that the above suit was dismissed with costs for default on 25-10-1951.

Uncertified copy of the order will be forwarded to you in due course.

Yours faithfully,
R.V. Pathan
Dist. Govt. Pleader.

LEGAL DEPT.
No. 23787
19.11.51

SUBD for information
Result being favourable
may be recorded after copies
and terms are read.

9/4

A Lobb

14-11.

17 9

*Suits :*

Dharwar.

For perpetual injunction restraining the defendant from interfering with the plaintiff's possession of the Government building.

GOVERNMENT OF BOMBAY.

LEGAL DEPARTMENT.

Resolution No. 15207.

Bombay Castle, 22nd September 1951.

Letter from the Executive Engineer, Karnatak Public Health Work Division, Dharwar, No. G 14/A 1186 of 1951, dated the 20th February 1951—Forwarding the papers in the suit noted in the margin and requesting sanction to its defence.

IN THE COURT OF THE CIVIL JUDGE (JUNIOR DIVISION), DHARWAR.

CIVIL SUIT NO. 12 OF 1951.

Ramniklal Jain ... ... ... ... Plaintiff;

*versus*

The State of Bombay ... ... ... ... Defendant.

Memorandum to the District Government Pleader, Dharwar, No. 14340, dated the 7th September 1951—Forwarding a copy of the brief with its accompaniments in advance.

RESOLUTION.—Sanction is accorded to the defence of the suit on the lines of the accompanying brief.

By order of the Governor of Bombay,

J. R. DHURANDHAR,
Secretary to Government.

Original for

L Leg. H 175—1

[P.T.O.

To

*The Public Works Department,
*The Collector of Dharwar,
*The Executive Engineer, Karnatak Public Health Division, Dharwar.
The District Government Pleader, Dharwar (with two copies of the brief).

*With a copy of the brief.

No. of 1951.

Copy forwarded for information and guidance to

Served
14/12

Sabtd after view
file in S. Dharwar/57 (new)
15/12
ASO
15-12

19—23

DHARWAR CIVIL SUIT NO. 12 OF 1951.

*Chronological Statement of Facts.*

1. This is a suit for a perpetual injunction restraining the defendant from interfering with the plaintiff's possession of the Government building.

2. The plaintiff, one Ramniklal Jain, claimed to be a refugee and was provided with work, on daily wages, as a mere casual labourer, by the Deputy Engineer, Neersagar Head Works Sub-Division, Dharwar. His name was duly entered in the Nominal Muster Roll of the P. W. D. as a mere daily wages labourer.

3. The plaintiff is neither a regular nor a temporary employee of the Department and whenever there is no work, a labourer need not be engaged. Labourers of this type get their wages only for the days on which they work and present themselves for Roll call. Plaintiff absented himself from roll call from 13th January 1951 and never returned for work.

4. On 16th January 1951, the plaintiff called at the office to receive wages for the days for which he had worked and he accepted that payment.

5. No quarter was ever allotted to the plaintiff nor any quarters are meant for such labourers. He occupied a store-room unauthorisedly. Without giving any notice under section 80, Civil Procedure Code, he has filed the present suit without impleading Government as a party.

*Grounds of Defence.*

1. This is a suit for perpetual injunction restraining the defendant from interfering with the plaintiff's possession of the Government buildings.

2. The plaintiff has filed this suit without giving a notice as required by the mandatory provisions of section 80 of the Civil Procedure Code. The Court is on that account debarred from entertaining this suit.

3. The State of Bombay is a necessary party in this suit, admittedly being owner of and in possession of the store-room in dispute. The defendant is merely a servant of the State. He is not authorised to allot a store-room for residence of a labourer, as stores are kept inside the room. Necessary party being not impleaded in the suit, the suit should be dismissed on that account also. In case the plaintiff feels aggrieved by Shri Kulkarni's alleged ill will or *mala fides*, he may seek redress by way of damages from him, if so advised.

4. The plaintiff does not even allege any tenancy nor mentions any conditions of any tenancy. He does not claim to be a tenant. He is actually a trespasser and as such he has no right to sue for an injunction.

5. The suit, therefore, ought to be dismissed with costs. Costs in this case should be exemplary because the plaintiff has filed this suit not to obtain justice but only to lengthen the period of his unauthorised stay in the building. The suit is obviously false, frivolous and vexatious.

21

1951 Below monthly return for the month of January 51, from the District Government Pleader of Dharwar

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No. 653

Office of the
Remembrancer of Legal Affairs,
Bombay Castle, 12th Feb 1951.

Forwarded with compliments to the Collector of Dharwar with a request that the report and papers regarding Suit No. 12/51 mentioned in the return may be submitted at an early date in accordance with rule 118 of the Law Officers' Rules.

By Order,

for Remembrancer of Legal Affairs.

BM.
14.

Subd. for Sgd.

A Sdr

for